

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION**

ROBERT HOLMAN, )  
Plaintiff, )  
v. ) Civil Action No. 1:21-cv-01085-STA-jay  
THOMAS J. VILSACK, in his official )  
capacity as Secretary of the United States )  
Department of Agriculture, and )  
ZACH DUCHENEAUX, in his official )  
capacity as Administrator of the Farm Service )  
Agency, )  
Defendants. )

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**NOTICE OF SUPPLEMENTAL AUTHORITY  
IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

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Plaintiff submits the following opinion as supplemental authority: In *Miller v. Vilsack*, No. 4:21-cv-0595-O (N.D. Tex., July 1, 2021) (attached as Ex. 1). In *Miller*, the United States District Court for the Northern District of Texas issued an Order granting class certification to two classes of individuals, and an injunction to members of the classes in an action that also challenges Section 1005 of the American Rescue Plan Act, Pub. L. No. 117-2, § 1005 (2021).

*Miller* is relevant, persuasive authority. In addition to finding the government's evidentiary basis for a race-preference in sufficient, the Court rejected the government's arguments regarding the inquiry surrounding irreparable harm and funding availability:

Here, Plaintiffs are suffering a continuing and irreparable injury based on the direct effects of the race- and ethnicity-based application process. An ongoing constitutional deprivation can be sufficient to establish irreparable harm. See *Nat'l Solid Wastes Mgmt. Ass'n v. City of Dallas*, 903 F. Supp. 2d 446, 470

(N.D. Tex. 2012) (“[w]hen an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable [harm] is necessary”). Aside from that, there is the risk that any Plaintiffs who do establish the right to relief on the merits will be unable to access program funding by the time they receive a judgment in their favor. The Government suggests that the appropriated funds are limitless and will last long enough for Plaintiffs to access them if and when they secure a judgment on the merits. *See Inj. Hearing Tr.* The limited nature of Congressional appropriations both in terms of time and money suggest otherwise. While the Government may at times act like it, the public fisc is not bottomless, and at any time, Congress can turn off the spigot. *See Baker v. Concord*, 916 F.2d 744, 749 (1st Cir. 1990) (“Public funding to assist the disadvantaged is, of course, not limitless.”).

*See Miller v. Vilsack*, No. 4:21-cv-0595-O, \*20 (N.D. Tex., July 1, 2021).

Plaintiff respectfully submits this supplemental authority as Exhibit 1, pursuant to LR 7.2(h), as helpful to the question of whether an injunction is appropriate.

Dated: July 2, 2021.

Respectfully submitted,

/s/ William E. Trachman

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### CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below I filed the documents on the Court's electronic filing system. I future certify that I served the following persons in the manner indicated below.

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Dated: July 2, 2021.

Respectfully submitted,

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